

REMARKS

The present final Office Action addresses and rejects claims 1-7 and 28. Applicants thank Examiner Woo for extending the courtesy of a telephone interview to Applicants' undersigned representative on October 1, 2009. Independent claim 1 was discussed in view of the pending rejections. Various possible claim amendments were discussed and agreement was reached that claim amendments of the type made herein overcome the rejections. Applicants respectfully request entry of these amendments after final at least because they place the application in better form for appeal.

Claim Amendments

Independent claims 1 and 28 are amended to recite a tube having an inner bore running at least part-way therethrough for receiving a bone plug, a distal portion of the inner bore expanding in diameter to form a tapered edge at the distal end of the tube. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraphs [0038] and [0048], as well as in FIGS. 8 and 10. No new matter is added.

Rejections Pursuant to §102(b)

Claims 1-6 and 28 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,346,497 of Simon in view of U.S. Patent No. 5,725,495 of Strukel et al. ("Strukel"). Applicants disagree.

Independent claims 1 and 28 recite a tube having an inner bore running at least part-way therethrough for receiving a bone plug, a distal portion of the inner bore expanding in diameter to form a tapered edge at the distal end of the tube. Simon is directed to a surgical cutting head adapted to cut tissue while rotating. The cutting head of Simon has a cylindrical shape and does not expand in diameter to form a tapered edge at the distal end of the tube. Strukel does not remedy the deficiencies of Simon. Strukel is directed to ultrasonic needles having aspiration openings and does not teach a tube having an inner bore with a distal portion that expands in diameter to form a tapered edge at the distal end of the tube. Accordingly, claims 1 and 28, as well as claims 2-6 which depend therefrom, distinguish over Simon in view of Strukel and represent allowable subject matter.

Rejections Pursuant to §103(a)


Claim 7 is rejected pursuant to 35 U.S.C. §103(a) as being obvious over Simon in view of Strukel and in further view of U.S. Patent No. 6,358,253 of Torrie et al. ("Torrie"). The Examiner argues that Simon and Strukel disclose the invention substantially as claims, but admits that Simon and Strukel fail to teach or suggest a bone plug formed from articular cartilage and underlying bone tissue as required by claim 7. The Examiner therefore relies on Torrie to remedy this deficiency. Torrie does not, however, remedy the deficiencies of Simon and Strukel with regard to claim 1, from which claim 7 depends. Torrie is directed to a method for repairing cartilage and teaches an instrument having a cylindrical inner bore for extracting a cylindrical tissue sample. Torrie does not teach a tube having an inner bore with a distal portion that expands in diameter to form a tapered edge at the distal end of the tube as required by claim 1. Accordingly, claim 7 distinguishes over Simon, Strukel, and Torrie at least because it depends from an allowable base claim.

Conclusion

Applicants submit that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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